

include all such substances from all public and private establishments and from all residences.” 567 Iowa Admin. Code 100.2.

6. “Open burning” means “any burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack.” 567 Iowa Admin. Code 20.2 and 100.2.

7. “Open dump” means “any exposed accumulation of solid waste at a site other than a sanitary disposal project operating under a permit from the department.” 567 Iowa Admin. Code 100.2.

8. “Open dumping” means “the depositing of solid wastes on the surface of the ground or into a body or stream of water.” 567 Iowa Admin. Code 100.2.

9. “Rubbish” means “nonpetrifiable solid waste consisting of combustible and noncombustible wastes, such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery or litter of any kind.” 567 Iowa Admin. Code 100.2.

10. “Sanitary disposal project” means “all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.” Iowa Code § 455B.301(21).

11. “Solid waste” means “garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities.” Iowa Code § 455B.301(23).

Jurisdiction

Solid Waste Regulations

12. The Environmental Protection Commission (EPC) of the DNR is required to establish

rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, relative to the treatment and disposition of solid waste. Iowa Code § 455B.304. The EPC's rules implementing these provisions are contained in 567 Iowa Admin. Code 100-119.

13. Iowa law prohibits the dumping or depositing or permitting dumping or depositing of solid waste at any place other than a sanitary disposal project approved by the DNR. Iowa Code § 455B.307(1) and 567 Iowa Admin. Code 100.4.

14. The director of the DNR may issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1, or rules adopted pursuant to that part. Iowa Code § 455B.307(2).

15. Any person who violates any provision of Iowa Code section 455B, Division IV, Part 1, or any order, permit, or rule issued thereunder shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$ 5,000.00) for each day of such violation. Iowa Code § 455B.307(3).

16. The Attorney General, at the request of the DNR, may institute any legal proceeding necessary in obtaining compliance with an order of the director or prosecuting any person for a violation of Iowa Code section 455B, Division IV, Part 1, or any order, permit, or rule issued under that part. Iowa Code § 455B.307(2).

Air Quality Regulations

17. The DNR is the agency of the state responsible for the prevention, abatement or control of air pollution. Iowa Code § 455B.132.

18. Under Iowa Code section 455B.133(2), the EPC is required to adopt rules pertaining to the evaluation, abatement, control, and prevention of air pollution. Pursuant to that mandate, the EPC has adopted 567 Iowa Admin. Code 20-30 concerning air quality.

19. 567 Iowa Admin. Code 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, unless a variance has been granted under 567

Iowa Admin. Code 23.2(2), or one of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies.

20. The director of the DNR may issue orders consistent with rules to cause the abatement or control of air pollution. Iowa Code § 455B.134(9).

21. If any order, permit, or rule of the department is being violated, the Attorney General, at the request of the DNR or its director, may institute a civil action for injunctive relief to prevent any further violations or for the assessment of a civil penalty as determined by the court not to exceed Ten Thousand Dollars (\$10,000.00) for each day of such violation. Iowa Code § 455B.146.

Administrative Order Penalty Provision

22. The Attorney General is authorized under Iowa Code section 455B.109(4), on request of the DNR, to institute summary proceedings to recover the penalty and any accrued interest at the rate of one and one-half percent (1.5%) per month or part of a month on the unpaid balance where a penalty had been assessed by the DNR in a final administrative order but remains unpaid.

Facts

23. On September 9, 2003, the DNR conducted an inspection of Defendant Colleen Weber's property located at 3594 Highway 218, Osage, IA 50461, in response to a complaint about open dumping and burning at the property. During the inspection, the DNR observed an excavation containing boxes, building materials, oil filters, empty buckets, wood wire, old carpet, and tin cans. DNR officials also observed that open burning had taken place on the western edge of the excavation, which contained the residue of a chair, furniture, tires, and a bedspring, and noticed that there was standing groundwater located at the bottom of the excavation.

24. On September 11, 2003, the DNR issued a Notice of Violation to Defendant Colleen Weber for the violations observed during the September 9, 2003 inspection. The Notice directed Ms. Weber to cease open burning on her property and remove the material from the excavation and

properly dispose of it by December 20, 2003.

25. On September 12, 2003, the DNR had a phone conversation with Defendant Colleen Weber and instructed her to stop the open burning on her property and remove the material in the excavation since it is solid waste. The DNR also informed her of the December 20, 2003 compliance deadline.

26. On November 21, 2003, the DNR had another telephone conversation with Defendant Colleen Weber. She claimed that other individuals were dumping waste in her excavation. The DNR informed her that she should try and clean up the property and limit access to prevent other dumping.

27. On June 8, 2004, the DNR inspected the property to assess progress of solid waste cleanup at the site. During the inspection, the DNR observed that there was a gate across the drive in an attempt to limit access; however, vehicles could still drive between the fence posts to the east of the gate. The DNR also observed that there was still a significant amount of solid waste located at the site and was still in direct contact with ground water. The DNR gave Defendant Colleen Weber a new compliance deadline of September 2004.

28. On November 29, 2004, the DNR conducted an inspection of the property to determine whether any progress had been made in solid waste cleanup. The DNR observed that absolutely no progress had been made since the June, 2004 inspection and that vehicles could still access the site by going around the gate. The DNR confirmed that water was still in the excavation, which contained couches, recliners, mattresses, carpet, shingles, tin, and bags of household garbage.

29. On December 1, 2004, the DNR mailed a Notice of Violation to Defendant Colleen Weber for the violations observed during the November 29, 2004 inspection. The Notice stated that the DNR could take enforcement action in order to achieve compliance at the property.

30. On February 4, 2005, the DNR had a phone conversation with Defendant Colleen

Weber. Ms. Weber stated that she was financially unable to clean up the site and limit access to the site, and the DNR stated that she should provide financial documentation to prove inability to comply. Ms. Weber has never produced any such financial documentation.

31. On March 4, 2005, the DNR issued Administrative Order Nos. 2005-AQ-06 and 2005-SW-02 (a copy of which is attached, marked Exhibit A, and incorporated by reference), which required Defendant Colleen Weber to remove all solid waste from her property within thirty (30) days of receipt of the order and pay a One Thousand Five Hundred Dollars (\$1,500.00) administrative penalty to the DNR within sixty (60) days of receipt of the order.

32. On August 30, 2005, the DNR conducted an inspection of Defendant Colleen Weber's property to determine whether any cleanup activities had taken place. The DNR observed that little removal had been done and an attempt had been made to bury some of the solid waste in the excavation with earth. It was also observed that additional open burning had been conducted at the site, evidenced by a larger burn pile than in previous visits and freshly burned materials located in the excavation.

33. On January 17, 2006, Defendant Colleen Weber appealed the issuance of Administrative Order Nos. 2005-AQ-06 and 2005-SW-02.

34. On March 3, 2006, the DNR conducted an inspection of Defendant Colleen Weber's property. The DNR noticed additional open dumping since the last inspection, and Defendant Colleen Weber was again reminded that open dumping is illegal under Iowa law.

35. On March 20, 2006, the DNR drove by Defendant Colleen Weber's property and observed new solid waste that had been dumped at the site since the last inspection.

36. On April 4, 2006, Administrative Law Judge Margaret LaMarche issued a proposed decision (a copy of which is attached, marked Exhibit B, and incorporated by reference), affirming the issuance of Administrative Order Nos. 2005-AQ-06 and 2005-SW-02. Defendant Colleen Weber

did not appeal the decision.

37. On March 22, 2007, the DNR conducted an inspection of Defendant Colleen Weber's property in order to assess compliance with cleanup requirements. The DNR observed that no solid waste had been removed since the last visits in March of 2006. The DNR also observed new dumping and additional burning at the west end of the excavation and access to the site was still uncontrolled.

38. On August 23, 2007, the DNR conducted an inspection of Defendant Colleen Weber's property to assess compliance with cleanup requirements. The DNR observed that there had been no significant change to the excavation since their last visit on March 22, 2007. The DNR also observed additional waste dumped at the west end of the site and access to the property was still uncontrolled.

39. On August 28, 2008, the DNR conducted an inspection of Defendant Colleen Weber's property to assess progress of cleanup at the property. During the inspection, the DNR observed that no remedial action had been taken and noticed additional solid waste dumping.

40. On May 13, 2009, the DNR conducted an inspection of Defendant Colleen Weber's property to assess progress of cleanup at the property. During the inspection, the DNR observed that no remedial action had been taken to clean up or limit access to the property.

Violations

41. Defendant Colleen Weber has violated Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, and Administrative Order Nos. 2005-AQ-06 and 2005-SW-02 by improperly disposing of solid waste or allowing the improper disposal of solid waste at the property described in paragraph twenty-two (22).

42. Defendant Colleen Weber has violated 567 Iowa Admin. Code 23.2(1) and Administrative Order Nos. 2005-AQ-06 and 2005-SW-02 by allowing, causing, or permitting open

burning of combustible materials on the property described in paragraph twenty-two (22), despite the fact that no variance has been granted under 567 Iowa Admin. Code 23.2(2), and none of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies.

43. Defendant Colleen Weber has failed to pay the One-Thousand Five Hundred Dollar (\$1,500.00) penalty, or any accrued interest, even though the time for paying the penalty has passed, imposed by Administrative Order Nos. 2005-AQ-06 and 2005-SW-02.

Prayer for Relief

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Defendant Colleen Weber, pursuant to Iowa Code section 455B.307(3) for each day of violation of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, and Administrative Order Nos. 2005-AQ-06 and 2005-SW-02, not to exceed Five Thousand Dollars (\$5,000.00) for each such violation;
- b. assess a civil penalty against Defendant Colleen Weber, pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code 23.2(1) and Administrative Order Nos. 2005-AQ-06 and 2005-SW-02, not to exceed Ten Thousand Dollars (\$10,000.00) for each such violation;
- c. issue a permanent injunction, pursuant to Iowa Code section 455B.307(2), enjoining Defendant Colleen Weber from any violation of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, and Administrative Order Nos. 2005-AQ-06 and 2005-SW-02;
- d. issue a permanent injunction, pursuant to Iowa Code section 455B.146, enjoining Defendant Colleen Weber from any violation of 567 Iowa Admin. Code 23.2(1) and Administrative Order Nos. 2005-AQ-06 and 2005-SW-02; and
- e. enter an order that the Defendant Colleen Weber pay the administrative penalty assessed in Administrative Order Nos. 2005-AQ-06 and 2005-SW-02 and accrued interest, pursuant to Iowa Code section 455B.109(4).

Plaintiff further requests that the Court tax the costs of this action to the Defendant Colleen Weber and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General

JACOB J. LARSON, AT0009804
Assistant Attorney General
Lucas State Office Building
321 E. 12th St., Ground Flr.
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ATTORNEYS FOR PLAINTIFF

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

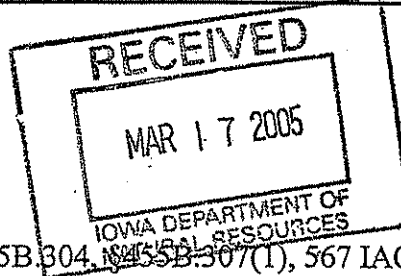
COLLEEN WEBER

ADMINISTRATIVE ORDER

NO. 2005-AQ-06

NO. 2005-SW-02

**TO: Colleen Weber
C/O Kevin Jahnel
3561 Trophy Ave
Osage, IA 50461**




VIOLATION: Iowa Code §455B.133, §455B.304, §455B.307(1), 567 IAC 23.2, and 567 IAC 100.4. You have allowed the open burning and open dumping of solid waste at your property. The burning produced large volumes of black smoke and other air pollutants. This open burning violation was discovered on September 9, 2003 in the NW ¼, of the NW ¼, of Section 27, Burr Oak Township, Mitchell County, Iowa. The remaining solid waste had not been properly disposed of at a permitted sanitary disposal project as of December 1, 2004.

ORDER: You shall remove all solid waste from the subject property within 30 days of the receipt of this Order. In addition, a penalty of \$1,500 is assessed effective 30 days from your receipt of this Order, and shall be paid to DNR at the address below, within 60 days of receipt of this Order, unless you appeal as provided below. \$500 of this amount is based on economic benefit, due to avoidance of solid waste disposal costs. \$500 of this amount is based on the gravity of the violation. The open burning of solid waste can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. \$500 of this amount is for culpability. You have the duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that your conduct is subject to the DNR's rules.

AUTHORITY: Iowa Code §455B.109, §455B.138; 567 IAC 10.3.

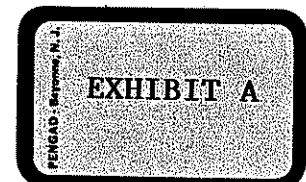
APPEAL: Iowa Code §455B.109; 561 IAC 7.5(1) A written Notice of Appeal may be filed with the Director, at the address below, within 30 days of your receipt of this Order. Informal negotiations or a contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Jon Tack, DNR Attorney at (515) 281-8889 for more information regarding appeal procedures and resolution of this Order.

NONCOMPLIANCE: If you fail to comply with this Order you may be subject to further penalties pursuant to Iowa Code §455B.109 or penalties and injunction pursuant to Iowa Code §455B.146 and §455B.307.



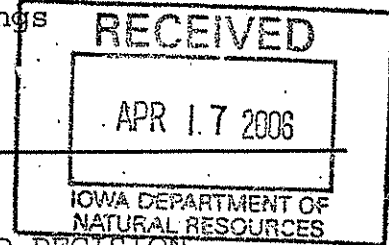
JEFFREY R. VONK, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES
502 East 9th Street, Wallace State Office Building, Des Moines, IA 50319

Dated this 4 day of March, 2005



F.O. #2

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Lucas State Office Building
Des Moines, Iowa 50319



IN THE MATTER OF:)

PROPOSED DECISION

COLLEEN WEBER.)

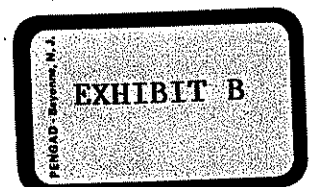
DIA NO: 06DNR003

On March 4, 2005, the Iowa Department of Natural Resources (DNR) issued Administrative Order Nos. 2005-AQ-06 and 2005-SW-02 to Colleen Weber (appellant). The administrative order required Colleen Weber to remove all solid waste from her property within 30 days and to pay a penalty of \$1,500.00. Colleen Weber filed an appeal. On January 17, 2006, the DNR transmitted the appeal to the Iowa Department of Inspections and Appeals for hearing. A Notice of Hearing was issued. Appellant Colleen Weber filed a petition on February 20, 2006 and requested a telephone hearing. On February 21, 2006, the DNR filed a Motion for Default, which was withdrawn after the DNR received Weber's Petition. The DNR filed an Answer on October 13, 2005. A telephone hearing was held before the undersigned administrative law judge on March 27, 2006 at 10:30 a.m. Attorney Jon Tack appeared for the DNR. Appellant Colleen Weber was self-represented. The hearing was recorded.

THE RECORD

The record includes the Administrative Order; Notice of Appeal; Notice of Hearing; Proof of Service; Petition; Motion for Default; Withdrawal of Motion for Default and Answer; Order Granting Request For Telephone Hearing; testimony of the witnesses; and the following exhibits:

- | | |
|----------------|---|
| DNR Exhibit 1: | Notice of Violation, 9/13/03; Complaint Form; photographs |
| DNR Exhibit 2: | Investigation Memo, 6/9/04; photographs |
| DNR Exhibit 3: | Investigation Memo, 11/29/04; photographs |
| DNR Exhibit 4: | Notice of Violation, 12/01/04 |
| DNR Exhibit 5: | Telephone Log, 2/4/05 |
| DNR Exhibit 6: | Inspection Memo, 8/30/05; photographs |



FINDINGS OF FACT

1. In 1999, Colleen Weber purchased an acreage located immediately southeast of the intersection of Highway 9 and Highway 218 in Mitchell County, Iowa. Weber intended to eventually sell her house in town and reside in a double-wide trailer that she would move to the property. When an old trailer that had been on the property was severely water-damaged, Weber contacted a Mitchell County employee, Ginger Thompson, who reportedly gave Weber permission to burn the remains of the trailer. Ginger Thompson is no longer a county employee. Weber did not contact the DNR about her plan to burn the trailer. Weber arranged for metal to be salvaged from the old trailer and hired a contractor to excavate a pit on the property. Weber placed the remains of the trailer in the excavation and burned it.

On another occasion, Weber was burning grass on the property when another old trailer that she was using for storage caught on fire. Weber called the fire department but they were unable to save the trailer or its contents. Weber salvaged the metal and put the burned remains of the trailer in the existing excavation.

Weber bought a trailer and had it delivered to the property. However, this trailer was ruined by rain and once again, Weber salvaged the metal and burned the remains of the trailer in the excavation.

People have driven onto Weber's property and have deposited various items of solid waste, including car parts, appliances, building materials, carpet, old furniture, and tree branches, sometimes burning these items in the excavation. Colleen Weber and her father have caught several people dumping solid waste in the excavation on Weber's property and have told them that they could not leave solid waste there. However, they have never reported the illegal dumping to the DNR. (Testimony of Colleen Weber; Charles Bielefeld; Petition; DNR Exhibit 1)

2. On September 5, 2003, the DNR received an anonymous complaint of illegal dumping and illegal burning on Weber's property. On September 9, 2003, DNR Environmental Specialist Jeff Vansteenburgh went to Weber's property to investigate the complaint and observed the pit she had excavated on the south

side of the property, which appeared to have been dug specifically for the purpose of waste disposal. Vansteenburgh saw boxes, building materials, oil filters, empty buckets, wood wire, old carpet, and cans in the hole. Water was standing in the bottom of the excavation, even though the area had not had rain for some time. On the west edge of the excavation, Vansteenburgh observed residue from a fire, including bed spring wire, a partially burned chair and other furniture, and beads from tires. Vansteenburgh took photographs of the solid waste and the burned solid waste in the excavation. (Testimony of Trent Lambert; DNR Exhibit 1)

3. On September 11, 2003, Vansteenburgh sent Weber a Notice of Violation letter for the solid waste and open burning violations that he observed on September 9, 2003. Vansteenburgh included a copy of the open burning and solid waste regulations and warned Weber that the water in the bottom of the excavation was likely groundwater. Weber was told to properly dispose of all of the solid waste by December 20, 2003 and to submit her landfill receipts to the field office. (DNR Exhibit 1; Testimony of Trent Lambert)

4. In November 2003, Vansteenburgh called Weber and told her that she needed to limit access to her property. Weber posted no trespassing signs and installed a gate across the gravel driveway to the property. Weber also installed some steel fence posts but did not install fencing between the posts. Weber obtained an estimate of \$450.00 for 300 feet of plastic snow fencing but could not afford it. People continued to drive around the gate between the fence posts in order to dump solid waste on the property. (Testimony of Trent Lambert; Colleen Weber; Petition; DNR Exhibit 3)

5. On June 8, 2004, DNR Environmental Specialist Trent Lambert visited Weber's property to follow-up on the cleanup progress. Lambert observed the gate across the driveway but saw that vehicles could still freely drive between the fence posts to the east of the gate. Lambert also observed that a significant amount of waste remained in the open pit, which was approximately half full of water. Lambert saw a truck on the property, which appeared to be in use for salvaging metal. Lambert took photographs of his observations. After consulting with Jeff Vansteenburgh, Lambert gave Weber until September 2004

to complete the cleanup. (Testimony of Trent Lambert; DNR Exhibit 2)

6. Trent Lambert returned to Weber's property on November 29, 2004, but again observed that little or no cleanup progress had been made since his prior inspection. The excavated pit remained approximately half-full of groundwater. The solid waste items on the property included couches, recliners, mattresses, carpet, shingles, tin, and bags of household garbage. There was still a vehicle path around the driveway gate, although it did not appear that any new waste had been deposited on the property. Lambert took photographs of the property. (Testimony of Trent Lambert; DNR Exhibit 3)

On December 1, 2004, Trent Lambert sent Colleen Weber a second Notice of Violation, citing her failure to make progress in cleaning up the solid waste on her property. Lambert notified Weber that he was referring her case to the central office legal section for enforcement action. (Testimony of Trent Lambert; DNR Exhibit 4)

7. On March 4, 2005, the DNR issued Administrative Order Nos. 2005-AQ-06, 2005-SW-02 to Colleen Weber and assessed a \$1500 civil penalty for violating Iowa Code §§455B.133, 455B.304 and 567 IAC 23.2 and 100.4.

a. \$500 was assessed for economic benefit due to avoidance of solid waste disposal costs.

b. \$500 was assessed for gravity of the violation because open burning of solid waste can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment.

c. \$500 was assessed for culpability because of the duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that her conduct is subject to the DNR's rules.

(Testimony of Trent Lambert; Administrative Order)

8. Weber is now slowly remodeling a fourth trailer in the hope of eventually living in it. A friend of Weber's used a tractor to move the trailer to Weber's property. He removed the gates

to get the trailer in but has not yet been replaced the gates due to frozen ground. Weber's friend used an end loader on his tractor to move some of the spoil dirt into the excavation but stopped when he ran out of gas.

On August 30, 2005, Lambert returned to Weber's property to determine whether she had made progress in cleaning up the solid waste. Lambert saw that some of the spoil pile from the excavation had been pushed back into the hole, along with some of the solid waste. Another DNR environmental specialist reported that he had seen smoke in the area of the pit in the past few weeks. Lambert observed a new larger burn pile east of the original burn pile. Lambert took additional photographs of the property. (Testimony of Trent Lambert; DNR Exhibit 6)

9. In March 2006, DNR personnel observed additional solid waste dumping on Weber's property. Weber admits that she brought bags of food wastes from Casey's General Stores and from restaurants to her property and left them out to feed her 55 cats. Environmental Specialist Trent Lambert estimates that it would cost \$2,000-\$4,000 to properly clean up the site as it now exists. (Testimony of Trent Lambert; Colleen Weber)

10. Colleen Weber receives social security disability, has gone through a bankruptcy, and has many debts. Weber has not provided any independent verification of her financial situation to the DNR but has reported varying amounts of debt in her petition and in her testimony at hearing. Weber apparently owes money for back taxes, utilities, attorney's fees, and medical bills. She reports that the bank has foreclosed on her home in Osage, although she is unsure of the status of the foreclosure. (Testimony of Colleen Weber; Petition; DNR Exhibit 5)

CONCLUSIONS OF LAW

I. Solid Waste Violation

Iowa Code section 455B.307(1)(2005) provides, in relevant part:

1. A private agency or public agency shall not dump or deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director unless the agency has been granted a permit by the department

which allows the dumping or depositing of solid waste on land owned or leased by the agency...

The director is authorized to issue any order necessary to secure compliance with or prevent a violation of the provisions of Iowa Code chapter 455B, part 1, division IV, or the rules adopted pursuant to that part. Iowa Code section 455B.307(2) (2005).

Iowa Code section 455B.304 authorizes the Environmental Protection Commission (commission) to establish rules for the proper administration of part 1 of division IV. The commission has established solid waste rules at 567 IAC chapters 100 and 101.

"Private agency" means an individual or any form of business organization authorized under the laws of this or any other state. 567 IAC 101.3

"Solid waste" means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials including, but not limited to, such materials as resulting from industrial, commercial, agricultural and domestic activities..." 567 IAC 101.3.

Like Iowa Code section 455B.307(1), 567 IAC 100.4 prohibits dumping or depositing of solid waste at any place other than a sanitary disposal project approved by the director, or pursuant to a permit.

The preponderance of the evidence established that Colleen Weber has violated Iowa Code section 455B.307(1) and 567 IAC 100.4 by permitting the dumping or depositing of solid waste on her property located at the intersection of Highways 9 and 218 in Mitchell County, Iowa. The DNR's investigations have confirmed an ongoing violation of the laws prohibiting solid waste disposal. Colleen Weber initially excavated a large pit on her property in order to deposit and burn waste from a ruined trailer. Weber admits she deposited additional waste from two more trailers in the hole and that others have used the pit for waste disposal. While Weber denies that she ever allowed or permitted anyone else to use her property or the excavation as a site to deposit waste, Weber knew that this was occurring and has done little to prevent it. The gate, fence posts and no

trespassing signs were clearly ineffectual. When Weber and her father have caught people depositing solid waste on the property, they have not reported the offenders to the sheriff or to the DNR.

II. Open Burning Violation

Iowa Code sections 455B.134(9) and 455B.138(1) authorize the DNR Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated and permits issued pursuant thereto.

567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions).

567 IAC 23.2(3) provides for several exemptions from the prohibition against open burning. The exemptions include disaster rubbish, trees and trimmings under certain controlled conditions, flare stacks, landscape waste originating on the premises, recreational fires, backyard burning of residential waste at dwellings of four family units or less, training fires, paper or plastic pesticide containers and seed corn bags resulting from farming activities occurring on the premises, and agricultural structures. None of the exemptions apply to the burning that occurred on Weber's property.

The preponderance of the evidence established that Colleen Weber violated 567 IAC 23.2 by open burning or allowing the open burning of solid waste, including the remains of several trailers, on her acreage in Mitchell County.

III. Civil Penalty

Iowa Code section 455B.109 authorizes the commission to establish rules for the assessment of civil penalties of up to ten thousand dollars (\$10,000) per violation and provides that in proposing or assessing a penalty, the commission and director shall consider the costs saved or likely to be saved by non-compliance by the violator, the gravity of the violation, the degree of culpability of the violator, and the maximum penalty authorized for that violation under this chapter.

567 IAC chapter 10 was adopted by the commission to implement Iowa Code section 455B.109. It establishes the criteria for screening and assessing administrative penalties. In determining whether a violation is appropriate for the administrative assessment of civil penalties, the department will consider relevant factors. The factors include, in relevant part:

- 1) Costs saved or likely to be saved by noncompliance by the violator...567 IAC 10.2(1).
- 2) Gravity of the violation, including the actual or threatened harm to the environment or to public health and safety; involvement of toxic or hazardous substances or potential long-term effects of the violation; Federal program priorities, size of facility, or other pertinent factors, ...whether the type of violation threatens the integrity of a regulatory program, and expenses, or efforts by the government in detecting, documenting, or responding to a violation. 567 IAC 10.2(2) "a," "b," "d," "f," and "g."
- 3) Culpability, including the degree of intent or negligence; whether the case involves the false reporting of required information or tampering with monitoring devices; and whether the violator has taken remedial measures or mitigated the harm caused by the violation. 567 IAC 10.2(3)
- 4) The maximum penalty authorized for that violation under Iowa Code chapter 455B... 567 IAC 10.2(4)
- 5) Whether the assessment of administrative penalties appears to be the only or most appropriate way to deter future violations, either by the person involved or others similarly situated. 567 IAC 10.2(5).
- 6) Other relevant factors which arise from the circumstances of each case. 567 IAC 10.2(6)

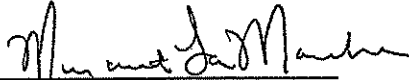
The DNR reasonably assessed Weber a \$1500 civil penalty based on the facts of the violations and the length of time that violations continued. Colleen Weber created the excavation on her property and used it for her own illegal solid waste

disposal and open burning. It is likely that the open burning of two trailers saved Weber at least \$500 in disposal costs. In addition, by creating the excavation and then failing to effectively restrict access to the property, Weber allowed others to use her property for illegal disposal of solid waste. While Weber denies that she permitted this use, she never reported any illegal dumping to the sheriff or the DNR, even when she knew the identity of the offenders. Illegal solid waste disposal and open burning pose significant risks to the environment and human health. This is particularly true in this case, where the solid waste is in direct contact with groundwater in the excavation. The DNR has expended significant resources in conducting several investigations. While Weber may have initially believed that it was legal for her to burn the first trailer, based on erroneous advice received from a county employee, this does not mean she is not liable for her legal act. Weber should have contacted the DNR prior to digging the excavation and burning the trailer. Moreover, Weber continued to allow burning on her property even after several warnings from the DNR that open burning was illegal.

ORDER

IT IS THEREFORE ORDERED that the issuance of Administrative Order Nos. 2005-AQ-06 and 2005-SW-02, is hereby AFFIRMED.

Dated this 4th day of April, 2006.



Margaret LaMarche
Administrative Law Judge
Department of Inspections and Appeals
Lucas State Office Building-Third Floor
Des Moines, Iowa 50319-0083

cc: Colleen Weber
3594 Hwy 218
Osage, Iowa 50461 (CERTIFIED)

Jon Tack, Attorney
Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa (LOCAL)

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Any party may appeal a proposed decision to the director of the department of natural resources within 30 days after receipt of the proposed decision and order. The agency may also decide on its own to review a proposed decision, notwithstanding the absence of a timely appeal by a party. 561 IAC 7.15(5)"a."